

A BILL TO BE ENTITLED
AN ACT

To enact the "DeKalb School Board Transparency Act;" to provide a code of ethics for the DeKalb County School System; to provide for prohibited practices; to provide for disclosure; to provide for sanctions on appointed officers and employees of the school system for violations; to provide for an ethics commission; to provide for membership; to provide for appointment and vacancies; to provide for eligibility; to provide for duties and powers; to provide for compensation; to provide for complaints against board members; to provide for hearings and actions; to provide for sanctions; to provide for appeals; to provide for a training program; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "DeKalb School Board Transparency Act."

SECTION 2.

As used in this Act, the term:

- (1) "Board" means the DeKalb County Board of Education.
- (2) "Commission" or "ethics commission" means the ethics commission created by Section 5 of this Act.
- (3) "Relative" means an elected official's, officer's, or employee's spouse and the following relationships by consanguinity or affinity: father, mother, son, daughter, brother, sister, grandparent, and grandchild. For purposes of this Act, the term "relative" shall also include any other person living in the household of the elected official, officer, or employee.

SECTION 3.

(a) Except as otherwise provided by general law, no elected official, appointed officer, or employee of the DeKalb County School System or of any office, department, or agency thereof shall knowingly:

(1) Engage in any business or transaction with or have a financial or other personal interest, direct or indirect, in the affairs of the DeKalb County School System which would result in a financial benefit, except for a financial benefit of a nominal or incidental amount, to the official, appointed officer, employee, or relative of such person or which would tend to impair the independence of judgment or action in the performance of official duties;

(2) Engage in or accept private employment from or render services for private interests when such employment or service is incompatible with the proper discharge of such person's official duties or would tend to impair his or her independence of judgment or action in the performance of his or her official duties;

(3) Disclose information or use information, including information obtained at meetings which are closed pursuant to Chapter 14 of Title 50 of the Official Code of Georgia Annotated, concerning the property, government, or affairs of the DeKalb County School System or any office, department, or agency thereof that is not available to members of the general public and that has been gained by reason of his or her official position for his or her personal gain or benefit, to advance his or her financial or other private interest, or to advance the financial or private interest of any other person or business entity;

(4) Represent private interests in any action or proceeding against the school system or any office, department, or agency thereof;

(5) Vote on or otherwise participate in the negotiation or the making of any contract of the board with any business or entity in which he or she, or his or her relative, has a financial interest;

(6) Solicit, accept, or agree to accept gifts, loans, gratuities, entertainment, transportation, lodging, meals, any ticket of admission, discounts, payment, or service, except those of a value less than \$50.00, from any employee, student, parent, person, firm, or corporation which to his or her knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the school system or any office, department, or agency thereof; provided, however, that an elected official who is a candidate for public office may accept campaign contributions and services in connection with his or her campaign;

(7) Advertise business and professional services to the school system or its employees for personal gain;

(8) Use school system resources for personal or commercial enterprise;

(9) Vote or otherwise participate in an appointment, employment, or promotion decision of the board or school system involving a relative;

(10) Vote or otherwise participate in an appointment, employment, or promotion decision of the board or school system of a person when the public official knows or should know that such vote or participation would create a direct or indirect monetary benefit or economic opportunity for such public official or his or her relative;

(11) Have a personal interest, directly or indirectly, in school system real estate, school textbooks, or school materials and supplies of any kind whatsoever;

(12) Sell, solicit, or offer for sale to the board or to any official or employee of the board, directly or indirectly, any kind of real estate, textbooks, or school materials and supplies, or receive any salary, bonus, or commission on any such sale;

(13) Have a financial interest in school buses, bus equipment or supplies, provide services for buses owned by the board, or sell gasoline to the board from a corporation in which the board member is a shareholder;

(14) Use property of the school system for personal benefit or profit except in accordance with policies and procedures promulgated by the board;

(15) Vote or participate in discussions or deliberations at any meeting of the board or any committee of the board of any issue before the board in which the board member or a relative of the board member has matters involving consideration of his or her conduct, matters which would inure to his or her financial or personal interests, or matters which would be a conflict of interest for such person; or

(16) Serve on any public authority, board, commission, or other body or agency other than the DeKalb County Board of Education during his or her term as a member of the board.

(b) No elected official shall:

(1) As a consequence of his or her position accept any honoraria. As used in this paragraph, the term "honoraria" means a payment of money or anything of value for any appearance, discussion, speech, or article by such official, or for travel and subsistence expenses in excess of any actual and necessary expenses in connection with such appearance, discussion, or speech; or

(2) Either directly or indirectly solicit membership in any professional organization or labor union which represents employees of the school system.

(c)(1) Any elected official, appointed officer, or employee of the school system who has any financial interest, directly or indirectly, in any contract or matter pending before or within any office, department, or agency of the school system shall disclose such interest in writing to the board. Any board member who has a financial interest in any contract or matter pending before the board shall disclose such interest, in writing, and such

disclosure shall be entered on the records of the board. The disclosure of any salary received by a board member from the school system or any entity doing business with the school system may be accomplished by naming the entity and position held by the board member with such entity. Interest and dividends from entities doing business with the school system which are listed on a national stock exchange or have more than 100 stockholders do not have to be disclosed. Likewise, the disclosure of any salary received by a relative of the board member may be accomplished by naming the relative and the position held. The board member also shall disqualify himself or herself from participating in any decision or vote relating thereto.

(2) Any contract between the school system and another party shall contain a provision that the contract is voidable or rescindable at the discretion of the board at any time if any elected official, appointed officer, or employee has any interest in such contract and does not disclose such interest in accordance with the provisions within this Act.

(3) The provisions of paragraphs (1), (11), (12), and (13) of subsection (a) of this section shall not apply to any business transaction:

(A) In which any financial or other personal interest has been disclosed fully pursuant to paragraph (1) of this subsection;

(B) Which has been noticed to the public in the legal organ of DeKalb County in a manner that discloses, at a minimum:

(i) The material terms of such transaction; and

(ii) The name, title, and interest in the transaction of any person to whom, but for the provisions of this paragraph, the provisions of paragraphs (1), (11), (12), or (13) of subsection (a) of this section would otherwise apply;

(C) On which the public is provided a reasonable opportunity to comment at a regular meeting of the board prior to any vote by the board on approving the transaction; provided, however, that such opportunity for public comment shall be held at least 30 days after publication of the notice required by subparagraph (B) of this paragraph; and

(D) Which, after providing the opportunity for public comment pursuant to subparagraph (C) of this paragraph, has been approved by a majority vote of the board:

(i) Upon a finding by the board that the transaction serves the best interests of the school system and the taxpayers of DeKalb County;

(ii) Which vote is taken prior to the execution of any agreement related to the transaction and any performance or payment related thereto; and

(iii) Which vote is noted by a proper entry on the minutes of the board.

(d) Prior to January 31 of each year, each elected official shall disclose publicly the identity of any relative employed by the DeKalb County School System to the executive assistant to the board on such form as prescribed by the board.

SECTION 4.

(a) Appointed officers and employees of the school system may be punished for violation of the provisions of this Act as provided in this section.

(b) Appointed officers and employees not subject to civil service or covered by the provisions of Official Code of Georgia Annotated Section 20-2-940, et seq., shall have the right to request a hearing before the board upon written charges being provided to such officer or employee. At such hearing, the officer or employee shall have the right to be heard, to be represented by counsel, and to require the attendance of witnesses and the production of relevant books and papers. If, after the hearing, the accused board member is found to have violated the provisions of this Act as alleged, he or she may be suspended or dismissed from the service of the school system by a majority vote of the members of the board.

(c) Employees covered by the provisions of Official Code of Georgia Annotated Section 20-2-940, et seq., shall be subject to suspension, dismissal, or nonrenewal in accordance with the provisions of that general law.

(d) Employees subject to civil service rules, upon a violation of this Act, shall be subject to suspension or dismissal in accordance with the provisions of this Act and the personnel rules and regulations adopted by the board.

SECTION 5.

(a) Board members shall be punished for violations of this Act as provided in this section. The authority to punish ethical violations by members of the board shall be vested exclusively in the DeKalb County School System ethics commission created pursuant to this section and not in the board, except as otherwise provided by general law.

(b)(1) The DeKalb County Legislative Delegation to the General Assembly shall establish a seven-member ethics commission to consider ethics complaints brought against a board member. Each member of the delegation may nominate up to two candidates and the members of the commission shall be elected by majority vote of the delegation. When the commission is first established, three persons will be appointed to serve four-year terms, and four persons will be appointed to serve two-year terms. Thereafter, members shall serve terms of four years. Each member of the commission shall hold office from the date of appointment until the end of the term for which he or she was appointed. Members of the commission shall not be eligible for reappointment. If a vacancy occurs on the commission, the delegation shall within 45 days appoint a person to fill the unexpired term.

(2) Before the commission is established, the delegation shall determine whether all members of the commission shall be residents of DeKalb County or whether all such

members shall be selected from outside the county. Once such decision is made, it shall be irrevocable and may be changed only by legislation.

(3) The members of the delegation should make their initial nominations within 30 days after the effective date of this Act, and the delegation shall vote on the first members of the commission within 60 days after the effective date of this Act.

(4) The delegation shall appoint successors to members of the commission whose terms are due to expire, in the same manner as for appointing the initial members, with the nominations made at least 60 days before the expiration of the term and a vote made at least 30 days prior to such date.

(c) A person is eligible to serve as a member of the ethics commission if that person, while serving:

(1) Is at least 21 years old and a registered voter in his or her county of residence;

(2) Is not an employee of the DeKalb County Board of Education or a relative or a business associate of any member of the board;

(3) Does not hold any elected or appointed office and is not a candidate for any office in the government of the United States, the State of Georgia, or DeKalb County;

(4) Has not provided a financial contribution of more than \$100.00 to or worked significantly in the political campaign of any current member of the board;

(5) Is not a relative of a person who provided a financial contribution of more than \$100.00 to or worked significantly in the political campaign of any current member of the board; and

(6) Has undergone a criminal background check and has not been convicted of a felony.

(d)(1) Members of the ethics commission shall be compensated on a per-meeting basis at a rate determined by the board and based on the appropriation of funds. A commission member must be in attendance in order to receive compensation.

(2) The ethics commission shall elect one member to act as chairperson for a term of two years or until a successor is duly elected. The chairperson shall have the same voting rights as the other commission members. The commission shall also elect one member to act as vice chairperson for the same term. If the office of chairperson or vice chairperson is vacated in any manner before the expiration of the term, the commission shall elect a member to fill the unexpired term. If any member of the commission repeatedly fails to carry out his or her official duties, attend meetings of the commission, or adhere to the ethical code of conduct as provided by this Act or other applicable state or federal law, that member may be removed from the commission by vote of the majority of the other members of the commission.

(3) The board office shall provide staff support to the ethics commission. The board shall annually establish and fund a budget for operations of the commission, with expenditures

from this budget to be authorized and carried under budgetary controls established by the board. It is the intention of the General Assembly to seek state funding of the commission within two years after July 1, 2010, and the obligation of the board to provide and fund a budget for the commission shall terminate when and if state funding becomes effective.

(4) Five members of the commission shall constitute a quorum.

(5) The commission shall establish guidelines relating to sanctions for various offenses consistent with the provisions of this Act.

(6) The commission shall have the authority to retain legal counsel as needed.

(7) The commission shall be authorized to adopt a seal for use in the conduct of its official business.

(e)(1) Any citizen eligible to vote in DeKalb County or any employee of the DeKalb County School System may file a complaint alleging a violation by a board member of the standards established by this Act or other applicable state or federal law by filing it with the commission. The complaint shall be in writing and verified under oath.

(2) The chairperson of the ethics commission shall immediately forward a copy of the complaint by certified mail to the board member against whom the complaint was filed, along with a copy to each member of the board. A complaint must be filed within six months of the date of the alleged violation or, in the case of concealment or nondisclosure, within six months of the date the alleged violation should have been discovered after due diligence.

(3) Within 30 days of receipt of a complaint, the ethics commission shall meet to review the complaint to determine the complaint's credibility and whether the complaint alleges a violation which, if proven true, would warrant sanction. Such meeting shall not be open to the public. If, after reviewing the complaint, the commission by majority vote determines that no good and sufficient cause exists for a determination that a violation exists, the commission may dismiss the complaint and shall report said dismissal to the board and the complaining party.

(f) If the commission determines that good and sufficient cause exists for a determination that a violation has occurred, the commission shall conduct a formal public hearing. The commission shall at least 20 days prior to the hearing notify the board member charged with a violation of the date, time, and place for the hearing by certified and regular mail at the person's last known address. Notice shall be complete upon mailing of the notice. At the hearing, the commission shall hear sworn testimony from all witnesses it deems relevant. Formal rules of evidence shall not apply, but the commission shall have the authority to exclude witnesses or testimony which it deems irrelevant. The hearing shall be recorded by a certified court reporter. The commission is authorized to issue subpoenas on behalf of any party and for the appearance of any party or documents as provided by law. A party desiring

the issuance of a subpoena shall at least ten days before the hearing request the commission to issue the subpoena. Upon receiving such request, the commission shall be required to issue the subpoena at least three days prior to the hearing. Hearings shall be open to the public and shall comply with all state and federal open meetings and open records laws.

(g) The accused board member shall have the following rights:

(1) To be represented by counsel;

(2) Upon written notice provided by the accused board member to the commission, to view all written or recorded statements or physical evidence in the possession of the commission or its agents relating to the alleged violation and to be presented with a list of all witnesses sufficiently prior to the hearing to allow the accused board member to prepare for such hearing; provided, however, that the accused board member so electing shall be required to allow the commission to view reciprocal information relating to the alleged violation sufficiently prior to the hearing to allow the commission to prepare for the hearing. Such reciprocal information shall include recorded statements and physical evidence in the possession of the accused board member or his or her agents as well as a list of all witnesses. This paragraph shall be deemed to have been automatically invoked, without the written notice, when the accused board member has sought discovery pursuant to Chapter 11 of Title 9, the "Georgia Civil Practice Act," where such discovery material is the same as the discovery material that may be provided under this paragraph when a written notice is filed pursuant thereto. Except as provided in this paragraph, nothing in this subsection is intended to authorize discovery or inspection of attorney work product. No witness shall be compelled to speak with the accused board member or the commission or their respective agents prior to the hearing;

(3) To subpoena, through the commission, any relevant documents or witnesses at any location where the commission shall conduct a hearing, provided that the subpoena is served on the person or entity being subpoenaed at least 24 hours prior to the hearing. In the event that a person or entity fails, refuses, or neglects to comply with a subpoena so issued, the party requesting the subpoena may file a motion in the Superior Court of DeKalb County for a rule nisi hearing, which may be heard by the superior court in the same manner as for a subpoena issued by said court. If at such rule nisi hearing, the court determines that the person or entity who is the subject of the motion should be held in contempt, then the contemnor may be punished in the same manner and to the same extent as for contempt of a subpoena issued by the court;

(4) To cross-examine all witnesses testifying at the hearing;

(5) To view any exculpatory written or recorded statements or physical evidence in the possession of the commission sufficiently prior to the hearing to allow the accused board member to prepare for such hearing; and

(6) Unless otherwise excluded pursuant to subsection (f) of this section, to present any evidence and testimony in his or her defense.

(h) If the commission determines from clear and convincing evidence presented during the hearing that the accused board member committed the offense of which he or she is accused, the commission shall issue written findings and shall censure or reprimand the board member or order the removal of the board member from office.

(i) The commission shall notify the board and the board member of any action it takes pursuant to subsection (h) of this section within five days of its decision by sending a certified letter to the chairperson and vice chairperson of the board, the accused board member, and the accused board member's attorney, if any. The accused board member shall provide the commission with an address to which the commission's decision may be mailed, and notice of the decision shall be deemed to have been delivered on the day it was posted to such address.

(j) If the commission orders removal of a board member from office, the board member shall immediately lose all voting privileges and other privileges as a board member, pending the resolution of any appeal.

(k) Any appeal of the commission's decision shall lie in the Superior Court of DeKalb County. The decision of the commission shall become effective within 10 days unless within such period the accused board member files a petition for review or other legal action in the court.

(l) No member of the ethics commission or any person acting on behalf of the ethics commission, operating within the course and scope of this section, or any person bringing a complaint before the commission, shall be liable to any person for any damages arising out of such action; provided, however, that this subsection shall not apply to any person bringing before the commission a complaint that he or she knows to be false or which he or she should have known to be false were it not for that person's intentional disregard of the veracity of the complaint.

SECTION 6.

The board shall provide for a mandatory training program for persons who are elected or reelected to the board and to persons who are newly appointed to the commission. Such training shall be completed within 60 days of such election, reelection, or appointment. The training program shall include an explanation of the prohibitions contained in Section 3 of this Act and the practices and procedures contained in Section 5 of this Act. The board may contract with an institution of the University System of Georgia or any certified institution or individual qualified to perform such training, and the cost shall be borne by the DeKalb County School System. No appointed member of the commission shall be eligible to

316 participate in any function of the commission until he or she has completed such training
317 program.

318 **SECTION 7.**

319 This Act shall become effective upon its approval by the Governor or upon its becoming law
320 without such approval.

321 **SECTION 8.**

322 All laws and parts of laws in conflict with this Act are repealed.